FILED
DEC 6 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 631

In the Matter of

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Debtor.

ISRAEL A. ABRAMS, et al., etc.,

Petitioners,

vs.

HENRY A. SCANDRETT, WALTER J. CUMMINGS and GEORGE I. HAIGHT, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, et al.,

Respondents.

MOTION FOR LEAVE TO CITE DECISION OF THE NINTH CIRCUIT RENDERED NOVEMBER 28, 1941, AS IN CONFLICT WITH THE DECISION IN THE INSTANT CASE, IN SUPPORT OF THE PENDING PETITION FOR REHEARING.

MEYER ABRAMS,
Attorney for Petitioners.

SHULMAN, SHULMAN AND ABRAMS,
134 North La Salle Street,
Chicago, Illinois.

Midwest Law Printing Co.
Delaware 6669
361 W. Superior St.
Chicago

In The

Supreme Court of the United States

October Term, A. D. 1941.

No. 631

In the Matter of

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Debtor.

ISRAEL A. ABRAMS, et al., etc.,

Petitioners,

vs.

HENRY A. SCANDRETT, WALTER J. CUMMINGS and GEORGE I. HAIGHT, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, et al.,

Respondents.

MOTION.

Now come petitioners by Meyer Abrams, their counsel, and move for leave to cite the annexed opinion rendered by the Ninth Circuit on November 28, 1941, in the matter of the reorganization of the Western Pacific Railroad Company Case No. 9714 in support of the pending Petition for a Rehearing. The case is deemed to be in conflict with the decision in the instant case as per Suggestions in Support of the Motion.

Meyer Abrams,
Counsel for Petitioners.

SUGGESTIONS IN SUPPORT OF MOTION.

The Petition for Certiorari was denied November 10, 1941. A Petition for Rehearing is now pending. Since the filing of the Petition for Rehearing, the Ninth Circuit rendered a decision on November 28, 1941, in the Reorganization Proceedings of the Western Pacific Railroad Company reversing the Interstate Commerce Commission and the District Court. A copy of the Opinion is annexed hereto as an Appendix. The decision is in conflict with the decision in this case in the following respects:

The Seventh Circuit held in the instant case that the finding of the Commission was conclusive on the Court. The Court said (R. 156):

> "In the face of the findings and conclusion of the Commission, which was within its authority, and which was backed by personal knowledge of the extent and value of services rendered, we are convinced that the District Court correctly held it was powerless to allow appellants any sum in this case."

The Ninth Circuit arrived at the opposite conclusion in the annexed Opinion. It said:

> "The District Court's opinion states (34 F. Supp. 501): 'It cannot be gainsaid that the Commission knows all about the debtor, its property, its history, financial and otherwise, its traffic and revenue, and its financial structure. No official body in the country is better qualified by reason of experience, ability and specialized knowledge than is the Commission to find the ultimate facts as to the debtor in relation to any of the matters mentioned.' The statement indicates a possible misconception."

After referring to the section to point out the misconception, the Opinion says:

> "In determining whether a plan of reorganization satisfies the requirements of subsection (o), **the court is not concluded by any determination made by the Commission**, but may, and **must, exercise its own independent judgment**; and this is true whether such determination relates to value **or to some other subject.**"

We ask this Court to examine this Opinion and to compare it with the Petition for Certiorari (pp. 25-30), the Answer of the Respondent to the Petition (p. 18), Petitioners' reply (pp. 1, 6-7), and the Petition for Rehearing (p. 3).

The annexed Opinion is also of great importance on another phase presented by the Petition. We urged (pp. 32-35) that neither the Commission nor the Court were able to say that the services were not beneficial due to the fact that when the Commission decided the fee question, the Court had not yet approved the Plan, and when the Court decided the question, its Order approving the Plan was not yet final, and that we may still succeed on the appeal so that the services may be beneficial.

We filed a Motion here for leave to file a copy of our Brief in connection with the appeal for the approval of the Plan in order to demonstrate this point. This Court did not pass on the Motion when it denied the Writ. This Court may notice that Point I (pp. 12-18) in that Brief *is the point on which the Ninth Circuit reversed the Commission and the District Court.* The Ninth Circuit also held in that Opinion that neither the "Debtor" nor the Mortgage Trustee may be heard on appeal, but only *a party in interest who is affected thereby.* Petitioners are the only parties in interest who may obtain the relief on

the appeal. The granting of the petition will be helpful to the whole estate as they are the only appellants who had the right to be heard on the appeal.

We, therefore, ask the Court to consider the annexed Opinion in connection with the issues presented by the Petition, the Motion for Leave to File Brief and Exhibits on which no order was entered, and the Petition for a Rehearing, to the end that the Writ may be allowed.

Respectfully submitted,

MEYER ABRAMS,
Counsel for Petitioners.

N. B.—Since printing this Motion the writer was informed by telephone by the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit that the appeal in the instant case by the appellants, who are the petitioners herein, from the approval and confirmation of the reorganization plan, was reversed with directions to refer the plan back to the Interstate Commerce Commission. The writer has not yet seen the opinion but he verily believes that the decision was based on the opinion of the Ninth Circuit, annexed hereto at page 5, which opinion was also furnished to the Seventh Circuit.

MEYER ABRAMS,
Attorney for Petitioners.

Chicago, December 4, 1941, 6 p. m.